

1314

United States 1314

Circuit Court of Appeals

For the Ninth Circuit. /

FIRST NATIONAL BANK OF PARK RAPIDS,
a Corporation,

Plaintiff in Error,

vs.

R. F. PRAY,

Defendant in Error.


Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
Second Division.

FILED

APR 21 1922

F. D. MONCKTON,
CLERK



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov

United States
Circuit Court of Appeals
For the Ninth Circuit.

FIRST NATIONAL BANK OF PARK RAPIDS,
a Corporation,

Plaintiff in Error,

vs.

R. F. PRAY,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
Second Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Answer to Third Amended Complaint.	8
Assignments of Error.	45
Bill of Exceptions.	18
Bond on Writ of Error.	67
Certificate of Clerk U. S. District Court to Transcript of Record.	70
Citation on Writ of Error.	73
Judgment of Nonsuit.	17
Minutes of Court—January 20, 1922—Order Granting Motion for a Judgment of Non- suit, etc.	16
Names and Addresses of Attorneys of Record.	1
Order Granting Motion for a Judgment of Nonsuit, etc.	16
Order Settling Bill of Exceptions.	43
Petition for Writ of Error and Order Direct- ing Writ to Issue.	44
Praecipe for Record on Writ of Error.	68
Return to Writ of Error.	72
Stipulation Approving Bill of Exceptions.	42
Stipulation Waiving Jury.	15

	Index.	Page
TESTIMONY ON BEHALF OF PLAIN-		
TUFF:		
TABER, W. M.		19
Third Amended Complaint on Promissory		
Note Against Guarantor.		1
Writ of Error.		70

Names and Addresses of Attorneys of Record.

WILLARD P. SMITH, Esq., Claus Spreckels Building,
San Francisco, Calif.,
Attorney for Plaintiff.

ALBERT A. ROSENSHINE, Esq., and Messrs.
GOLDMAN, NYE & SURR, Mills Building,
San Francisco, Calif.,
Attorneys for Defendant.

In the District Court of the United States in and
for the Southern Division of the Northern District
of California, Second Division.

No. 16,519.

THE FIRST NATIONAL BANK OF PARK
RAPIDS,

Plaintiff,

vs.

R. F. PRAY,

Defendant.

**Third Amended Complaint on Promissory Note
Against Guarantor.**

Now comes the plaintiff and for its third amended
complaint herein alleges:

I.

That plaintiff is now, and at all the times herein
mentioned was, a banking corporation organized
under the laws of the United States and carrying on

2 *First National Bank of Park Rapids*

a banking business at Park Rapids, in the State of Minnesota.

II.

That plaintiff is a citizen of the State of Minnesota.

III.

That defendant is a citizen of the State of California and a resident of the northern district of California.

IV.

That more than three thousand dollars (\$3,000), exclusive of interest and costs, are involved in the controversy herein.

V.

That at Park Rapids, in the State of Minnesota, on or about the 22d day of March, 1915, the White Stores Company [1*] made, executed and delivered to plaintiff its promissory note in writing, a copy of which reads as follows:

“Park Rapids, Minn., March 22d, 1915.

March 22d, 1916, after date, (without grace) for value received, I promise to pay to the order of THE FIRST NATIONAL BANK OF PARK RAPIDS \$4,500.00 Four Thousand Five Hundred dollars with interest at the rate of 8 per cent per annum, payable annually from date until paid. Payable at The First National Bank, Park Rapids, Minn.

All the signers and endorsers hereby severally

*Page-number appearing at foot of page of original certified Transcript of Record.

waive demand, notice of non-payment, and protest.

THE WHITE STORES COMPANY.

By J. SHERE,

Pres.

By R. F. PRAY.

Secretary.”

(Endorsed on the back as follows:)

“For value received I guarantee the payment of the within note at maturity or any time thereafter waiving demand, protest and notice of protest.

J. SHERE.

R. F. PRAY.”

“Endorsement on principal: Balance due on
Principal. 5/7 18 993.21 3506.79.”

VI.

That on or about March 22, 1915, and prior to the delivery of the same, the defendant, in writing, for value received, guaranteed the payment of said note at maturity and waived demand, protest and notice of protest of same.

VII.

That the said White Stores Company became insolvent prior to 1918 and that its property was placed in the hands of trustees in insolvency and defendant during the years 1916, 1918 and 1919 requested plaintiff not to press the payment of said note, and assured plaintiff that dividends would be received from the said trustees of said White Stores Company to apply on said note during the years above mentioned; and defendant

further assured plaintiff that an extension would enable defendant to secure from other sources money to apply on the said note; and plaintiff in compliance with said requests and assurances did not [2] press the payment of said note during said years of 1916, 1918 and 1919; and plaintiff at the request of defendant extended the maturity of said note and said maturity was extended to September 19, 1919, and relying upon said requests of defendant to extend the maturity of said note and to refrain from instituting suit on the same, plaintiff extended the maturity of same until September 19, 1919.

VIII.

That no part of said note has been paid, except the sum of \$993.21, which was paid thereon May 15, 1918.

And for a second cause of action against said defendant, plaintiff alleges:

I.

That plaintiff is now, and at all the times herein mentioned was a banking corporation organized under the laws of the United States and carrying on a banking business at Park Rapids, in the State of Minnesota.

II.

That plaintiff is a citizen of the State of Minnesota.

III.

That defendant is a citizen of the State of California and a resident of the northern district of California.

IV.

That more than three thousand dollars (\$3,000), exclusive of interest and costs, are involved in the controversy herein.

V.

That at Park Rapids, in the State of Minnesota, on [3] or about the 22d day of March, 1915, the White Stores Company made, executed and delivered to plaintiff its promissory note in writing, a copy of which reads as follows:

“Park Rapids, Minn., March 22d, 1915.

March 22d, 1916, after date, (without grace) for value received, I promise to pay to the order of THE FIRST NATIONAL BANK OF PARK RAPIDS \$4,500.00 Four Thousand Five Hundred Dollars with interest at the rate of 8 per cent per annum, payable annually from date until paid. Payable at the First National Bank, Park Rapids, Minn.

All the signers and endorsers hereby severally waive demand, notice of non-payment, and protest.

THE WHITE STORES COMPANY.

By J. SHERE,

Pres.

By R. F. PRAY,

Secretary.”

(Endorsed on the back as follows:)

“For value received I guarantee the payment of the within note at maturity or any

time thereafter waiving demand, protest and notice of protest.

J. SHERE.

R. F. PRAY."

"Endorsement on principal: Balance due on Principal 5/7 18 993.21 3506.79."

VI.

That on or about March 22, 1915, and prior to the delivery of the same, the defendant, in writing, for value received, guaranteed the payment of said note at maturity and waived demand, protest and notice of protest of same.

VII.

That no part of said note has been paid, except the sum of \$993.21, which was paid thereon May 15, 1918.

VIII.

That within four years next preceding the beginning of this action the defendant in writing acknowledged the said indebtedness and promised to pay the same.

WHEREFORE plaintiff demands judgment against the defendant in the sum of Four Thousand Five Hundred Dollars (\$4500), with interest from March 22, 1915, at eight per cent per annum, less said sum of \$993.21 to be applied upon the interest and costs.

WILLARD P. SMITH,

MARK WOOLEY,

Attorneys for Plaintiff. [4]

United States of America,
State of California,
City and County of San Francisco,—ss.

Willard P. Smith, being first duly sworn, deposes and says:

That he is the attorney for the plaintiff above named; that he has read the foregoing third amended complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated on information and belief and as to those matters that he believes it to be true.

The reason why this verification is not made by plaintiff is that plaintiff is a corporation organized under the laws of the United States and doing business in the State of Minnesota and none of its officers reside or are within the State of California or in the City and County of San Francisco where affiant has his office.

WILLARD P. SMITH.

Subscribed and sworn to before me this 28th day of November, 1921.

[Seal]

E. J. CASEY,

Notary Public in and for the City and County
of San Francisco, State of California.

Receipt of a copy of the within third amended complaint is hereby admitted this 28th day of November, 1921.

ALBERT A. ROSENSHINE,

Atty. for Deft.

[Endorsed]: Filed Nov. 28, 1921, W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

In the District Court of the United States, in and
for the Southern Division of the Northern Dis-
trict of California, Second Division.

No. 16,519.

THE FIRST NATIONAL BANK OF PARK
RAPIDS,

Plaintiff,

vs.

R. F. PRAY,

Defendant.

Answer to Third Amended Complaint.

Now comes defendant answering to the third
amended complaint of plaintiff herein, and for
answer thereto admits, denies and alleges as fol-
lows:

**FIRST DEFENSE TO FIRST CAUSE OF
ACTION.**

I.

Defendant denies that during the years 1916,
1918 and 1919, or either of these or any year or at
all, defendant requested plaintiff not to press the
payment of said note. In that connection defend-
ant avers that he was always anxious to have plain-
tiff press the payment of said note, though de-
fendant was not greatly desirous to have plaintiff
press the payment of the guaranty by this defend-

ant. That defendant never held out any inducement or request, however, to plaintiff not to press defendant herein upon said guaranty, or did anything whatsoever to cause plaintiff to refrain in any manner or for any time or at all from proceeding against defendant and defendant's guaranty.

Defendant denies that he ever assured plaintiff that dividends would be received from the trustees of White Stores Company in the years mentioned, or ever or at all. [6] Defendant, however, avers that dividends have accrued in the hands of said trustees of said White Stores Company, to apply and applicable on said note, in amounts at this time unknown to defendant but known to plaintiff, and which amounts either have been already paid to plaintiff or await plaintiff's acceptance in reduction or extinction of said note.

Defendant is informed and believes and therefore avers that said accumulations suffice to pay said note, and if not already distributed to plaintiff, are now ready for such distribution, and available to plaintiff.

Denies that defendant ever assured plaintiff that an extension would enable defendant to secure money from other sources to apply on said note or at all. Defendant avers that never at any time or place was plaintiff influenced in any manner or at all as to the time of bringing this or any action by any word or deed of defendant, written, spoken, or however manifested.

Denies that any delay of plaintiff in failing to

press or in bringing said action was in compliance with requests and assurances, or either of these, from defendant, or from any person at all.

Denies that plaintiff ever extended the maturity of said note, at any time or at all, or to any time or at all. Denies that plaintiff ever extended the time for payment of said guaranty. Avers that if plaintiff ever extended the time for payment of said note, such extension was never made known to defendant, and such extension released defendant as guarantor from his guaranty on said note.

Denies that defendant ever made any request to extend the maturity of said note and/or to refrain from [7] instituting suit thereon.

II.

Defendant has no information on which to form a belief, and basing his denial on that ground denies that no part of said note except the sum of \$993.21 has been paid.

Defendant is informed and believes and therefore alleges that all of said note has been paid, and also that there exist available to plaintiff funds of the principal debtor applicable to and sufficient for the extinction of said note and all thereof.

SECOND DEFENSE TO FIRST CAUSE OF ACTION.

And for a further, second and separate defense to said first cause of action in said third amended complaint, defendant avers:

III.

That said purported cause of action is barred

by the Statutes of Limitation of the State of California, and by the provisions of Section 337 and 339 of the Code of Civil Procedure of the State of California. Defendant avers that said statutes and each and all of them have run against said note and against said guaranty, and that more than two years, and that more than four years, have passed since the maturity of said note, and since the maturity of said guaranty.

IV.

That said sum of \$993.21 was paid on or about May 7th, 1918, and was not paid by this defendant, or at his request, or with his knowledge, or with his funds. Defendant is informed and believes, and therefore avers, that same was paid by [8] the principal debtor upon said note, and in nowise availed to extend the time allowed by law to sue or at all to toll the Statute of Limitations as to the guaranty or as to this defendant. That defendant has done nothing to preclude or delay the operation of said Statute of Limitations, and expressly relies on same.

THIRD DEFENSE TO FIRST CAUSE OF ACTION.

And for a further, third and separate defense to the first cause of action in said third amended complaint, defendant avers:

V.

That it does not set forth facts sufficient to constitute a cause of action, in that while it avers that said note has not been paid, it nowhere avers that said guaranty has not been paid. That said

guaranty is an obligation distinct from said note, and so held in 164 Cal. 332 and other cases.

FIRST DEFENSE TO SECOND CAUSE OF ACTION.

For a first defense to the second cause of action set forth in said third amended complaint, defendant admits, denies and alleges as follows:

I.

Defendant has no information on which to form a belief, and basing his denial upon that ground, denies that no part of said note except the sum of \$993.21 has been paid.

Defendant is informed and believes, and therefore alleges, that all of said note has been paid, and also that there exists funds of the principal debtor applicable to and sufficient for the extinction of said note, and all thereof. [9]

II.

Denies that within four (4) years next preceding the commencement of this action, or at any time or at all, the defendant in writing or otherwise acknowledged said indebtedness or any indebtedness, and denies that within said time or ever, he promised to pay same or any thereof.

SECOND DEFENSE TO SECOND CAUSE OF ACTION.

(Statute of Limitations.)

And for a further, second and separate defense to said second cause of action, defendant avers that:

III.

Said purported cause of action is barred by the

Statutes of Limitation of the State of California, and by the provisions of Section 337 and 339 of the Code of Civil Procedure. Defendant avers that said statutes have run against said note and against said guaranty, and that defendant has never since the running of said statutes promised to pay said indebtedness, or acknowledged said indebtedness.

THIRD DEFENSE TO SECOND CAUSE OF ACTION.

And for a further, third and separate defense to the second cause of action set forth in said third amended complaint, defendant avers that:

IV.

It does not set forth facts sufficient to constitute a cause of action. That it appears to recognize that the Statute of Limitations has run against the original guaranty, and apparently attempts to rely upon a new promise as the basis of action, and that said new promise is not set up and is not [10] pleaded, and the reference thereto is a mere conclusion of the pleader and insufficient for any purpose.

WHEREFORE, defendant prays that plaintiff take nothing by its third amended complaint herein, and that defendant be hence dismissed with his costs.

ALBERT A. ROSENSHINE and
GOLDMAN, NYE & SURR.

State of California,

City and County of San Francisco,—ss.

Albert A. Rosenshine, being first duly sworn, deposes and says: That he is one of the attorneys for defendant above named; that he has read the foregoing answer to the third amended complaint of plaintiff, and that same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

That the reason why this verification is not made by defendant is that defendant has his office and residence and actually in the County of Tehama, and the office and residence of affiant are both in the City and County of San Francisco.

ALBERT A. ROSENSHINE.

Subscribed and sworn to before me this 23d day of December, 1921.

[Seal]

EUGENE W. LEVY,

Notary Public in and for the City and County of
San Francisco, State of California. [11]

Due service and receipt of copy of within answer admitted this 23d day of December, 1921.

WILLARD P. SMITH,

Attorney for Plaintiff.

[Endorsed]: Filed Dec. 23, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[12]

In the District Court of the United States, in and
for the Southern Division of the Northern Dis-
trict of California, Second Division.

No. 16,519.

THE FIRST NATIONAL BANK OF PARK
RAPIDS,

Plaintiff,

vs.

R. F. PRAY,

Defendant.

(Stipulation Waiving Jury.)

A jury is hereby waived.

Dated: San Francisco, December 21, 1921.

WILLARD P. SMITH,

Attorney for Plaintiff.

ALBERT A. ROSENSHINE,

VINCENT SURR,

Attorneys for Defendant.

So ordered:

FRANK H. RUDKIN,

Judge.

[Endorsed]: Filed Dec. 22, 1921. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[13]

At a stated term, to wit, the November term, A. D. 1921, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Friday, the 20th day of January, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

(Title of Cause.)

Minutes of Court—January 20, 1922—Order Granting Motion for a Judgment of Nonsuit, etc.

Defendant moved the Court for a judgment of nonsuit and after arguments by counsel the said motion was submitted and being fully considered, it was ordered that said motion be granted and that a judgment of nonsuit be entered herein accordingly, with costs to the defendant. [14]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 16,519.

THE FIRST NATIONAL BANK OF PARK
RAPIDS,

Plaintiff,

vs.

R. F. PRAY,

Defendant.

Judgment of Nonsuit.

This cause having come on regularly for trial on the 20th day of January, 1922, before the Court sitting without a jury, a trial by jury having been waived by written stipulation filed; Willard P. Smith, Esq., appearing as attorney for plaintiff and Albert A. Rosenshine and Vincent Surr, Esqrs., appearing as attorneys for the defendant; and the trial having been proceeded with and evidence having been introduced on behalf of plaintiff, and the attorney for the defendant having, at the close of plaintiff's case, moved the Court for a judgment of nonsuit and the Court, after due consideration, having ordered that said motion be granted and that a judgment of nonsuit be entered herein with costs to the defendant;

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that plaintiff take nothing by this action; that judgment of nonsuit be and the same is hereby entered against said plaintiff herein; that defendant go hereof without day and that said defendant do have and recover of and from said plaintiff his costs herein expended taxed at \$20.80.

Judgment entered January 20, 1922.

WALTER B. MALING,
Clerk. [15]

District Court of the United States, Southern Division of the Northern District of California.

No. 16,519.

FIRST NATIONAL BANK OF PARK RAPIDS,
Plaintiff,

vs.

R. F. PRAY,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED: That the above-entitled action came on regularly for trial on Friday, the 20th day of January, 1922, at 10 o'clock A. M. on that day, before Hon. Wm. C. Van Fleet, Judge, without a jury, a jury having been waived by written stipulation heretofore filed herein; the above-named plaintiff being represented by Willard P. Smith, Esq., of San Francisco, California, and the above-named defendant, R. F. Pray, being represented by Albert A. Rosenshine, Esq., and Vincent Surr, Esq., of San Francisco, California; and the following proceedings and none others were had, and the following evidence and none other was offered and received:

Thereupon an opening statement of said cause was made by counsel for plaintiff.

Testimony of W. M. Taber, for Plaintiff.

Thereupon W. M. TABER was called as a witness for the plaintiff and, after having been duly sworn, testified as follows:

Direct Examination.

I live at Park Rapids, Minnesota, and was the President [16] of the plaintiff bank during relations with the defendant, and had been President for twenty years. I recognize the note in question; that is the note in question; the guarantee in question is endorsed on the back of the note.

The note in question was thereupon offered in evidence and, being produced and examined by counsel for defendant, it was offered and received in evidence without objection, said note reading as follows:

“Park Rapids, Minn., March 22d, 1915.

“March 22d, 1916 after date (without grace), for value received, I promise to pay to the order of THE FIRST NATIONAL BANK OF PARK RAPIDS \$4500.00 Four Thousand Five Hundred, Dollars with interest at the rate of 8 per cent per annum, payable annually from date until paid. Payable at The First National Bank, Park Rapids, Minn.

“All the signers and endorsers hereby severally waive demand, notice of nonpayment, and protest.

“THE WHITE STORES COMPANY.

“By J. SHORE, Pres.

“By R. F. PRAY, Secretary.”

(Endorsed on the back as follows:)

(Testimony of W. M. Taber.)

“For value received I guarantee the payment of the within note at maturity or any time thereafter waiving demand, protest and notice of protest.

“J. SHORE.

“R. F. PRAY.”

“Endorsement on principal Balance due on Principal. 5/7 18 993.21 3506.79”

WITNESS.—(Continuing.) I had certain correspondence with Mr. Pray in regard to this note, and he was out here in California during that time. Letters passed between me at Park Rapids, Minnesota, and Mr. Pray here in California.

Counsel for plaintiff then produced and offered in evidence a letter which, upon being examined by counsel for defendant, was objected to by said counsel for defendant on the ground that it was immaterial, irrelevant and incompetent, and that it had nothing to do with the question of waiver of the statute or the question of forbearance; which objection was sustained; to which plaintiff's counsel [17] excepted, which exception was then and there allowed, and is herein designated as “Exception No. 1,” and plaintiff now assigns said ruling as error.

Said letter reads as follows (dated March 29, 1915):

“Mr. W. M. Taber,

“President The First National Bank,

“Park Rapids, Minn.

Dear Sir: Pursuant to your letter of March 22d, I am sending you herewith my check for \$1500.00 and also the two notes of the White Stores Co. for

\$1500.00 and \$4500.00 respectively. The first one named, we understand you are to cancel and keep on file with the other papers concerning this transaction.

“The payment on the \$4500.00 note to be made from time to time as mentioned in a former letter.

“I would appreciate greatly if you could send me maps showing the locations of the various lands described in the list which you sent me. Also advise me if the taxes are paid and the interest on the mortgages. Also advise me when the other mortgages expire.

“Please let me know all of the above before you transfer the Shore mortgages to me as I may prefer to let the matter stand as it is rather than assume the payment of the other mortgages. Also let me know in a general way whether you think it would be possible to renew the other mortgages providing they become due within a year.

“Thanking you for fixing this matter up for me, I remain,

“Yours very truly,

“R. F. PRAY.”

Plaintiff's counsel then produced and offered in evidence a letter dated October 7th, 1915, and the same being examined by counsel for defendant its introduction was objected to by him on the same grounds; which objection was sustained; to which plaintiff's counsel excepted, which exception was then and there allowed, and is herein designated as “Exception No. 2,” and plaintiff now assigns said ruling as error.

Said letter reads as follows:

“Park Rapids, Minnesota, October 7th, 1915.

“Mr. R. F. Pray,

“Westwood, Calif.

“Dear Sir: Yours of the 1st inst., to our Mr. Taber is at hand, and in regard to the White Stores’ note would say that I understand the conditions under which we are holding this note. Mr. Taber is still at the Rochester Hospital where he has undergone an operation for gall trouble. We expect him back here about the latter part of next week, as he seems to be getting along nicely.

“Yours very respectfully,

“M. C. SCHONEBERGER.”

Counsel for plaintiff hereupon produced and offered in evidence a letter dated February 21st, 1916, which upon examination was objected to by counsel for defendant; on the same grounds, and on the further ground that it was before the note became due, before the statute began to run; which objection was sustained; to which [18] ruling plaintiff’s counsel excepted; which exception was then and there allowed, and is hereby designated as “Exception No. 3.” Plaintiff now assigns said ruling, to which said exception was taken, as error. Said letter reads as follows:

“Park Rapids, Minnesota, February 21st, 1916.

“Mr. R. F. Pray,

“Westwood, Calif.

“Dear Sir: I have yours of February 16th in reference to the J. Shere matter, and replying will

say that the \$17,800 mortgage to Wyman-Partridge is recorded before our mortgage and makes no mention of our mortgage in any way, and unless we could show that they knew about ours it probably would come ahead of the \$6,000 mortgage given to us by Mr. Shere, he told me that this mortgage could be taken up at any time, or that he could make almost any arrangement with them.

“I am writing Mr. Shere to-day concerning this matter and asking him to have it attended to; that is, to have them either release the \$17,800 mortgage and make a new one, or give us an agreement whereby the \$6,000 mortgage would be taken care before they look to their mortgage. I do not know for sure just what he can do. We are very anxious indeed, to have this matter cleaned up, and of course if you can now arrange to pay the balance of the \$5,000 mortgage, we will assign this mortgage to you, and do our best to get a second mortgage made on the property.

“Yours very respectfully,

“W. M. TABER.”

“I have not been able to get any interest out of Shere. The \$4,500 note will be due Mch 22d and I shall be very glad to have it taken up.”

Counsel for plaintiff hereupon produced and offered in evidence a letter dated May 23d, 1916, and upon examination, the introduction of said letter in evidence was objected to by counsel for defendant on the same ground, which objection was sustained. To said ruling plaintiff's counsel excepted; which exception was then and there allowed, and is hereby

designated as "Exception No. 4." Plaintiff now assigns said ruling, to which said exception was taken, as error. Said letter reads as follows:

"Westwood, Cal. May 23, 1916.

"Mr. W. M. Taber,

"First National Bank,

"Park Rapids, Minn.

"Dear Sir: In reply to your letter of May 18th I wonder if it would not be possible in some way to have Mr. Shere adjust the mortgage in some way with Wyman-Partridge Co. by cancelling the old one and giving a new one to have the one they give you take precedence over it. It must have been Mr. Shere's intention to have the one they give you filled before the one for Wyman-Partridge. This may seem like an [19] unusual procedure but Mr. Shere is an unusual man and does things in an unusual manner and I will ask you to take the matter up along this line and see if you cannot get it fixed as I have suggested. What I mean is this. By endorsement J. Shere is responsible for the notes and to escape some of the liability on this, he might be able to make the trade.

"Is there any reason why you could not put in the claim on the notes which the White Stores Co. gave you in the amount of \$6,000, as the matter probably stands that way on their books. Any dividend paid would, therefore, be on the larger amount and it would make it so much less for someone to make up the difference.

"With the good times on the iron range I think the White Stores Co. will pay out much better

than intimated in your letter, especially if put under a competent manager and if we could get the mortgage adjusted as suggested and claim filed for \$6,000 instead of \$4,500, it would leave the amount to be made up very considerable less than now appears. The \$1,500 which I sent you a year ago could be kept as a credit to my personal account if you could handle it in this way. There is certainly no evidence to show that the White Stores Co. took up the \$1,500 note.

“I am not in position at this time to take advantage of the offer made in the last paragraph of your letter, but I would still be glad if you could give me the valuation of the land upon which Mr. Shere give the mortgage, as asked for in a former letter.

“Yours truly,

“R. F. PRAY.”

Counsel for plaintiff hereupon produced and offered in evidence a letter dated June 1st, 1916, and, upon examination, the introduction of said letter in evidence was objected to by counsel for defendant on the same ground, but not on the ground it is a copy, which objection was sustained. To said ruling plaintiff's counsel excepted; which exception was then and there allowed, and is hereby designated as “EXCEPTION No. 5.” Plaintiff now assigns said ruling, to which said exception was taken, as error. Said letter reads as follows:

“June 1, 1916.

“Mr. R. F. Pray,

“Westwood, Cal.

“Dear Sir: I have yours of May 23rd in reference to the White Store Company's note, and replying will say that I feel very sure that Mr. Sheere is not able to get the Wyman-Partrich people to release their mortgage. They promised to let me hear from them before June 1st but up to this I have heard nothing from them. On a separate sheet I give you as near as I can the valuation of the lands that we have in the six thousand dollar (\$6000) mortgage. I am very anxious, of course, to get this matter cleaned up. I am ready and [20] willing to do anything I can to help you but as you know, of course, when the loan was made it was made on the stripe of your endorsement and it is really you that we are looking to for our payment and I would appreciate it very much if you would arrange at this time to take the loan up as it is due and we, of course, ought to have our money. If you can not take it all up at this time I would suggest that you pay us what you can and I will take a new note from you bearing interest at the rate of six per cent and will hold the White Stores notes as collateral security to your note.

“I inclose you, herewith, a few blanks and you can fill them out payable to us in such amounts as you will be able to take care of and return to me and we will do our best to get what we can out of the White Stores Company's assets on the

strength of the six thousand dollar (\$6000) notes.

"I inclose you a little assignment or statement concerning the fifteen hundred dollars we now have and if satisfactory you can sign and return to me so that I can file a claim for the six thousand dollars (\$6000) and interest.

"I am very sorry, indeed, that this has fallen so heavily on you but see no other way out of it at the present time.

"Yours truly,

"President."

Counsel for plaintiff hereupon produced and offered in evidence a letter dated November 19th, 1918, and, upon examination, counsel for defendant made the same objection to its introduction in evidence, and further objected to it on the ground that it has an offer of settlement made by the bank to the defendant, and that the offer was never accepted; which objection was sustained. To said ruling plaintiff's counsel excepted, which exception was then and there allowed, and is hereby designated as "EXCEPTION No. 6." Plaintiff now assigns said ruling, to which said exception was taken, as error. Said letter reads as follows:

"November 19th, 1918.

"Mr. R. F. Pray,

"Westwood, Cal.

"Dear Sir: We have been hoping we would be able to get something more out of the trustee in the White Stores Company but now have absolutely given up all hopes. We are still holding a

loan of \$4500 dated March 23, 1915 and upon which on May 17th, 1918, we received from the trustee \$993.21 which has been endorsed on the note, leaving a balance of \$3506.79 and interest.

"I always feel it is unnecessary to make expense if it can be avoided and at this time am going to make you this proposition Mr. Pray. You send us one-half of the balance of this note without taking into consideration the interest, that is \$1753.40 and we will cancel your name from the back of the note which entirely releases you. I feel that this [21] is more than meeting you half way and trust we will receive a remittance as above stated by return mail. This holds good only that you do so this month.

"We would be willing to take Liberty Bonds if you prefer.

"Yours truly,

"Pres."

Counsel for plaintiff hereupon produced and offered in evidence a letter dated November 26, 1918, and, upon examination, counsel for defendant made the same objection to the introduction of said letter in evidence, which objection was sustained. To said ruling plaintiff's counsel excepted, which exception was then and there allowed, and is hereby designated as "EXCEPTION No. 7." Plaintiff now assigns said ruling, to which said exception was taken, as error. Said letter reads as follows:

“Westwood, Cal., November 26, 1918.

“W. M. Taber,

“Pres., First National Bank,

“Park Rapids, Minn.

“Dear Sir: I have received your letter of Nov. 19th in regard to the notes of the White Stores Co., and wish to thank you for the kind manner in which you have referred to them.

“By same mail I also had a letter from the new trustee of the White Stores Co. in regard to final hearing, and have written my attorneys, Courtney & Courtney, for a little further information. I should hear from them in a few days and will then communicate with you.

“With personal regards, I remain,

“Very truly yours,

“R. F. PRAY.”

Counsel for plaintiff hereupon produced and offered in evidence a letter dated December 2d, 1918, and, upon examination, the introduction of said letter in evidence was objected to by counsel for defendant on the grounds before stated, which objection was sustained. To said ruling plaintiff's counsel excepted, which exception was then and there allowed, and is hereby designated as “EXCEPTION No. 8.” Plaintiff now assigns said ruling, to which said exception was taken, as error. Said letter reads as follows:

“Dec. 2nd, 1918.

“Mr. R. F. Pray,

“Westwood, Calif.

“Dear Sir: I am just in receipt of yours of No-

30. *First National Bank of Park Rapids*

vember 26th and, as stated in my former letter, we will be glad to have you give this due consideration at as early a date as possible [22] and advise us.

"Kindly give us your final answer between now and the 15th of this month.

"With personal regards, I am,

"Very sincerely yours,

"W. M. TABER."

Counsel for plaintiff hereupon produced and offered in evidence a letter dated December 11th, 1918, and, upon examination, to the introduction of said letter in evidence counsel for defendant made the same objection as heretofore, which objection was sustained. To said ruling plaintiff's counsel excepted, which exception was then and there allowed, and is hereby designated as "EXCEPTION No. 9." Plaintiff now assigns said ruling, to which said exception was taken, as error. Said letter reads as follows:

"Westwood, Cal., Dec. 11, 1918.

"Wm. McTaber,

"Pres., First National Bank,

"Park Rapids, Minn.

"Dear Sir: Referring to our recent correspondence in regard to the White Stores notes. I have just to-day received a letter from Courtney & Courtney, attorneys at Duluth, saying that there was in the hands of trustee, considerable amount for distribution to the creditors of that company, and the distribution would soon be made.

"When this is done, I should be very glad to

hear from you again. Please understand I do not wish to stall this matter off, but believe it is only proper to apply the distribution which you receive on these notes before making settlement.

“Very truly yours, *i*

“R. F. PRAY.”

Counsel for plaintiff hereupon produced and offered in evidence a letter dated December 16th, 1918, from the plaintiff to the defendant, the introduction of which in evidence was overruled by the Court. To said ruling plaintiff's counsel excepted; which exception was then and there allowed, and is hereby designated as “EXCEPTION No. 10.” Plaintiff now assigns said ruling, to which said exception was taken, as error. *i*

Said letter reads as follows:

“Park Rapids, Minnesota, Dec. 16th, 1918.

“Mr. R. F. Pray,

“Westwood, Calif.

“My dear Mr. Pray: I have yours of December 11th in reference to the White Stores Company note and replying will say this. Of course, you realize I am very anxious, indeed, to get [23] this matter cleaned up and off our books.

“If you care to make remittance as per my former letter, at this time, I will do this. I will agree to give you one half of any further amounts that we receive from the trustee. I should think this would be quite satisfactory to you.

"Kindly let me hear from you concerning this and oblige.

"Yours truly,

"W. M. TABER,

"President."

Counsel for plaintiff hereupon produced and offered in evidence a letter dated July 31st, 1919, and, upon examination, the introduction of said letter in evidence was objected to by counsel for defendant on the same grounds as heretofore, which objection was sustained. To said ruling plaintiff's counsel excepted; which exception was then and there allowed, and is hereby designated as "EXCEPTION No. 11." Plaintiff now assigns said ruling, to which said exception was taken, as error.

Said letter reads as follows:

"Park Rapids, Minnesota, 7/31/19.

"Mr. R. F. Pray,

"Westwood, Cal.

"My Dear Sir: The First National Bank of Park Rapids has turned over to me, for adjustment, a note upon which you appear as a guarantor, dated March 22nd, 1915, and upon which there remains still due, the sum of \$3506.79 and interest.

"You are of course familiar with the entire matter and there is no necessity for my going into details, except to advise you that the Bank feels that they must do something to protect its interests. I am advised by the Receiver of the White Stores Company that it will be some time before they can

(Testimony of W. M. Taber.)

be close up this matter, as they have sued the Red River Lumber Company and except to proceed on the double stock-holders liability. However I am instructed to advise you that to clean this matter up, the Bank will accept the face of the note and will return to you all dividends that they receive in connection with the receivership.

“In the event that you do not see fit to accept this proposition, the Bank have instructed me to sue on the note. This would be distasteful to the Bank, as well as the writer and I trust such course will not be necessary.

“Please let me hear from you at your earliest convenience. With kindest personal regards to yourself and family. I am,

“Very Truly Yours,

“MARK J. WOOLLEY.”

WITNESS. — (Continuing.) There was some correspondence between Mr. Woolley and Mr. Pray.

Mr. ROSENSHINE. — I will concede that Mr. Woolley was the attorney [24] for the Bank.

WITNESS.—(Continuing.) He was acting for the Bank at that time.

Counsel for plaintiff hereupon produced and offered in evidence a letter dated August 8th, 1919 (in response to the letter last offered in evidence), the introduction of which was objected to on the same grounds, and in addition thereto objection was made to the admission of the answer on the

(Testimony of W. M. Taber.)

ground that it sets forth a conditional compromise, if it sets forth a compromise; which objection was sustained. To said ruling plaintiff's counsel excepted; which exception was then and there allowed, and is hereby designated as "EXCEPTION No. 12." Plaintiff now assigns said ruling, to which said exception was taken, as error.

Said letter reads as follows:

"Westwood, Calif., Aug. 8, 1919.

"Mr. Mark J. Woolley,

"Park Rapids, Minn.

"My Dear Mark: I have your letter of July 31st relative to the White Stores note given to the First National Bank, Park Rapids, and bearing my endorsement.

"Last spring Mr. Taben wrote me that the balance of the note was about \$3,500.00 and that if we would send one-half of this amount, he would cancel the entire obligation against the White Stores and against me as an endorser. At that time I wrote Mr. Shere and told him about this offer and asked him to pay half of this settlement, and if he did, I would pay the other half and thus wipe this note out. Mr. Shere did not respond to this letter and I have written him again on the subject.

"This whole affair of the White Stores Co. has been a most unfortunate thing for me as I lost \$20,000.00 thru this investment and never felt I was responsible for it morally as I had nothing to do with the management of the stores.

“In addition to this loss I have already sent Mr. Taber \$1500.00 and am very anxious, indeed, to see it cleaned up, as it certainly has been a source of worry and anxiety to me.

“Would you not kindly ascertain Mr. Shere’s address and take the matter up with him direct and see if you cannot get half of the amount that Mr. Taber offered to settle for, and I will send the other half and get it out of the way.

“Hoping you will do this for me, I remain,

“Very truly yours,

“R. F. PRAY.” [25]

Counsel for plaintiff hereupon produced and offered in evidence a letter dated August 29th, 1919, and, upon examination, counsel for defendant made the same objection to the introduction of said letter in evidence; which objection was sustained. To said ruling plaintiff’s counsel excepted; which exception was then and there allowed, and is hereby designated as “EXCEPTION No. 13.” Plaintiff now assigns said ruling, to which said exception was taken, as error.

Said letter reads as follows:

“Park Rapids, Minnesota, 8/29/19.

“Mr. R. F. Pray,

“Westwood, Cal.

“My Dear Mr. Pray: I have a letter from J. Shere dated the 20th inst. in reply to a letter from me written after I had received your letter, in which he advises me that he has written you that he can do nothing at this time.

“I have again taken the matter up with Mr.

Taber and he tells me that he wrote you Nov. 19th, 1918, making you the proposition you suggested in your letter, but that same was contingent upon an acceptance during the month of Nov., 1918 and inasmuch as you did not see fit to accept same, he now advised me that he would not settle on that basis.

“You will understand that I have no discretion in this matter, the Bank simply renews the offer I made you in my former letter and that is contingent upon an early adjustment.

“I cannot help but feel that Shere is not doing the square thing with you, I see him frequently, he is located in the Andrus building two doors from my father’s office and I believe that he is making money, but of course has no tangible assets.

“The Bank looks to you as a responsible party for this money, anything that I could do for you in getting a settlement out of Shere I would be glad to do, but the Bank insists upon a settlement in the immediate future or they will insist upon an action being started to recover the total amount due with interest.

“I appreciate your position in this matter and realize that the whole affair was an unfortunate one, but you realize that banks look at the business, not the human side of questions.

“I shall greatly appreciate an early reply and trust that same will be adjusted without the un-

pleasantness of having to institute an action.

“Very truly yours,

“MARK J. WOOLLEY.”

Counsel for plaintiff hereupon produced and offered in evidence a letter dated September 19th, 1919, and, upon examination, the introduction of said letter in evidence was objected to by counsel for defendant [26] on the same grounds as heretofore stated, and in addition that the language of the letter is such that there can be no question that there is no request to forbear, the language being, “Inasmuch as the bank insists upon its legal right to sue the endorsers of the note, for which, however, I do not blame them, I suggest that they go ahead and sue either Mr. Shere or myself, or jointly, and ascertain what the outcome will be.” This objection was sustained. To said ruling plaintiff’s counsel excepted; which exception was then and there allowed, and is hereby designated as “EXCEPTION No. 14.” Plaintiff now assigns said ruling, to which said exception was taken, as error.

Said letter reads as follows:

“Westwood, Calif., Sept. 19, 1919.

“Mr. Mark J. Woolley,

“Park Rapids, Minn.

“Dear Sir: Since our last correspondence, I have tried very hard to get Mr. Shere to pay his half of the remaining portion of the note due the bank at Park Rapids but without any success whatever.

“Inasmuch as the bank insists upon its legal right to sue the endorsers of the note, for which,

however, I do not blame them, I suggest that they go ahead and sue either Mr. Shere or myself, or jointly, and ascertain what the outcome will be.

“Of course I am very sorry to have this action taken but see no way in which my legal rights may be determined any other way.

“Very truly yours,

“R. F. PRAY.”

Counsel for plaintiff hereupon produced and offered in evidence two letters dated respectively September 29th, 1919, and October 4th, 1919, and, upon examination, the introduction of said letters in evidence was objected to by counsel for defendant on the same grounds as heretofore stated, and as to the letter of October 4th the additional ground that there is nothing in the letter which could possibly be construed as a waiver of the statute. This objection was sustained. To said ruling plaintiff's counsel excepted; which exception was then and there allowed, and is hereby designated as “EXCEPTION No. 15.” Plaintiff now assigns [27] said ruling, to which said exception was taken, as error.

Said letter of September 29, 1919, reads as follows:

“Park Rapids, Minnesota, 9/29/19.

“Mr. R. F. Pray,

“Westwood, Cal.

“Dear Sir: I have your favor of the 19th inst. and note what you say in regard to being unable to secure any kind of a settlement out of J. Shere.

“In case I should be able to secure a note from

Mr. Shere running to you, for one-half of the amount due, would you in that case adjust this matter with the Bank?

"If you are interested in this proposition advise me and I will see what I can do. In any event please let me know what you think about same.

"Yours Truly,

"MARK J. WOOLLEY."

Said letter of October 4, 1919, reads as follows:

"Westwood, Calif., Oct. 4, 1919.

"Mr. Mark J. Woolley,
"Park Rapids, Minn.

"Dear Sir: In reply to your letter of Sept. 29th:

"I would not be satisfied to pay half the note with the understanding that Mr. Shere would give his note for the balance, as I am afraid Mr. Shere would not be in position to pay the note when it became due. I had thought you were proceeding to put this matter in court, so I referred the matter to my attorney out here and he thinks it will be satisfactory, in order to determine just what my liability is, to have suit brot on the note.

"Sorry I cannot see my way on account of the reason given to take up Mr. Shere's proposition.

"Yours truly,

"R. F. PRAY."

Counsel for plaintiff hereupon produced and offered in evidence two letters dated respectively June 26th, 1920, and July 22d, 1920, and, upon examination, the introduction of said letters in evidence was objected to by counsel for defendant on the same grounds as heretofore stated. This

objection was sustained. To said ruling plaintiff's counsel excepted; which exception was then and there allowed, and is hereby designated as "EXCEPTION No. 16." Plaintiff now assigns said ruling, to which said exception was taken, as error.

Said letter of June 26th, 1920, reads as follows:

"Park Rapids, Minn., June 26th, 1920.

"Mr. R. F. Pray,

"Westwood, Cal.

"My dear Sir: Mr. Taber has just been in to see me again in regard [28] to the notes he holds in which you are interested.

"He has just figured up the total amount, including interest, and the same amounts to about \$5,300, which does not figure all of the interest that is due. However, estimating it upon a basis of \$5,000, Mr. Taber requested that I again write you making you the following proposition:

"That the Bank will accept from you and give you a release from all further liability, the sum of \$2,500. and pay you one-half of any amounts that may be realized from dividends yet to be paid from the trusteeship of the White Stores Company.

"He would rather clean this matter up with you in this way than to be forced to go to the expense and trouble and the incidental unpleasantness of the institution of a lawsuit. He tells me that of course you were aware of the fact that at the time this money was loaned that he looked to you as the responsible individual in the transaction.

“I trust that you can see your way clear to adjust this matter on this basis and we shall be very glad if you so desire to institute an action in the State of Minnesota to recover from Mr. Shere, who, I think, is probably making some money. But in any event kindly give me a definite answer as to your intention in regard to adjusting this matter so that there will be no question as to what course the Bank must pursue.

“Very truly yours,

“MARK J. WOOLLEY.”

Said letter of July 22d, 1920, reads as follows:

“Westwood, Calif., July 22, 1920.

“Mr. Mark J. Woolley,

“Park Rapids, Minn.

“My Dear Mr. Woolley:

“Since receiving your letter of June 26th in regard to the White Stores notes, which I endorsed, I have consulted with my attorneys here and they advise me to let the matter go to suit, as in that way my legal rights will be fully protected in the matter.

“I appreciate very much the lenient manner in which Mr. Taber has treated this matter, and am sorry I will not be in position to take advantage of his kindness. I think possibly the best for all concerned will be to let the matter go to trial.

“Hoping you are enjoying the best of good luck in your practice and in your business, I remain,

“Yours truly,

“R. F. PRAY.”

WITNESS.—(Continuing.) All of these letters that the Bank received from Mr. Pray referred to this particular note, and there was no other indebtedness during that period except this \$4500 note.

Plaintiff thereupon rested.

The defendant thereupon moved for a nonsuit, which [29] was granted. To which nonsuit plaintiff's counsel excepted, which exception was thereupon allowed and is hereby designated as "EXCEPTION No. 17." Plaintiff now assigns said ruling, to which said exception was taken, as error.

AND BE IT FURTHER REMEMBERED that the above and foregoing bill of exceptions is a full, true and correct statement of all the evidence in the cause, also of all objections, rulings and exceptions and other proceedings in and upon the trial. And now, within due and proper time, said plaintiff presents and tenders this its said bill of exceptions to said Court, and prays that the same may be settled, approved and allowed, signed and certified.

Dated, San Francisco, March 1st, 1922.

FIRST NATIONAL BANK OF PARK
RAPIDS,

Said Plaintiff,

By WILLIAM P. SMITH,

Its Attorney.

Stipulation Approving Bill of Exceptions.

It is hereby stipulated and agreed that the fore-

going bill of exceptions is true and correct in all particulars, and that the same may be made a part of the records in the above-entitled case.

Dated, San Francisco, March 1st, 1922.

FIRST NATIONAL BANK OF PARK
RAPIDS,

Plaintiff.

By WILLIAM P. SMITH,

Its Attorney.

R. F. PRAY,

Defendant.

By ALBERT A. ROSENSHINE, and

GOLDMAN, NYE & SURR,

His Attorneys. [30]

Order Settling Bill of Exceptions.

United States of America,
Northern District of California,—ss.

In the matter of the foregoing bill of exceptions, duly presented in time by the plaintiff, First National Bank of Park Rapids, plaintiff in error, IT IS HEREBY ORDERED by said Court that said bill of exceptions be, and the same is hereby, settled, allowed and approved as true and correct in all particulars, and the same is hereby made a part of the records in the above-entitled cause.

Given and made at San Francisco, California,
this 8th day of March, 1922.

WM. C. VAN FLEET,
United States District Judge.

Receipt of a copy of the within bill of exceptions is hereby admitted this 2d day of March, 1922.

ALBERT A. ROSENSHINE,
GOLDMAN, NYE & SURR,

Attys. for Deft.

[Endorsed]: Filed Mar. 8, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [31]

In the District Court of the United States, Southern
Division of the Northern District of California,
Second Division.

No. 16,519.

FIRST NATIONAL BANK OF PARK RAPIDS,
Plaintiff,

vs.

R. F. PRAY,

Defendant.

**Petition for Writ of Error and Order Directing
Writ to Issue.**

The above-named plaintiff, feeling itself aggrieved by the judgment of the Court entered herein on the 20th day of January, 1922, comes now by its attorneys, Willard P. Smith and Mark K. Wooley, and petitions this Honorable Court for an order allowing said plaintiff to prosecute a writ of error to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States on that behalf made and provided.

WILLARD P. SMITH,
MARK K. WOOLEY,
Attorneys for Plaintiff.

Let a writ of error in the above cause issue as prayed for in the petition.

WM. C. VAN FLEET,

District Judge.

[Endorsed]: Filed Mar. 27, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [32]

In the District Court of the United States, Southern
Division of the Northern District of California.

No. 16,519.

FIRST NATIONAL BANK OF PARK RAPIDS,
Plaintiff,

vs.

R. F. PRAY,

Defendant.

Assignments of Error.

Now comes the plaintiff in error herein and says that in the record and proceedings in the above-entitled action there is manifest error and now makes, presents and files the following assignments of error on which it will rely, as follows, to wit:

I.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of a certain letter which was offered and introduced in evidence by the plaintiff as set forth in plaintiff's bill of exceptions, Exception No. 1; said letter reads as follows: (Dated March 29, 1915.)

“Mr. W. M. Taber,

“President the First National Bank,

“Park Rapids, Minn.

Dear Sir: Pursuant to your letter of March 22d, I am sending you herewith my check for \$1500, and also the two notes of the White Stores Co. for \$1500 and \$4500 respectively. The first one named, we understand you are to cancel and keep on file with the other papers concerning this transaction.

“The payment on the \$4500.00 note to be made from time to time as mentioned in a former letter.

“I would appreciate greatly if you could send me maps showing the locations of the various lands described in the list which you sent me. Also advise me if the taxes are paid and the interest on the mortgages. Also advise me when the other mortgages expire.

“Please let me know all of the above before you transfer the Shore mortgages to me as I may prefer to let the matter stand as it is rather than assume the payment of the other mortgages. Also let me know in a general way whether you think it would be possible to renew the other mortgages [33] providing they become due within a year.

“Thanking you for fixing this matter up for me, I remain,

“Yours very truly,

“R. F. PRAY.”

Plaintiff then and there duly excepted.

II.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of a

certain letter which was offered and introduced in evidence by the plaintiff, as set forth in plaintiff's bill of exceptions, Exception No. 2. Said letter reads as follows:

"Park Rapids, Minnesota, October 7th, 1915.

"Mr. R. F. Pray,

"Westwood, Calif.

Dear Sir: Yours of the 1st inst., to our Mr. Taber is at hand, and in regard to the White Stores' note would say that I understand the conditions under which we are holding this note. Mr. Taber is still at the Rochester Hospital where he has undergone an operation for gall trouble. We expect him back here about the latter part of next week, as he seems to be getting along nicely.

"Yours very respectfully,

"M. C. SCHONEBERGER."

Plaintiff then and there duly excepted.

III.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of a certain letter which was offered and introduced in evidence by the plaintiff as set forth in plaintiff's bill of exceptions, Exception No. 3; said letter reads as follows:

"Park Rapids, Minnesota, February 21, 1916.

"Mr. R. F. Pray,

"Westwood, Calif.

"Dear Sir: I have yours of February 16th in reference to the J. Shere matter, and replying will say that the \$17,800 mortgage to Wyman-Partridge is recorded before our mortgage and makes no men-

tion of our mortgage in any way, and unless we could show that they knew about ours it probably would come ahead of the \$6,000 mortgage given to us by Mr. Shere, he told me that this mortgage could be taken up at any time, or that he could make almost any arrangements with them.

"I am writing Mr. Shere to-day concerning this matter and asking him to have it attended to; that is, to have them either release the \$17,800 mortgage and to make a new one, or give us an agreement whereby the \$6000 mortgage would be taken care before they look to their mortgage. I do not know for sure just what he can do. We are very anxious [34] indeed, to have this matter cleaned up, and of course if you can now arrange to pay the balance of the \$5,000 mortgage, we will assign this mortgage to you, and do our best to get a second mortgage made on the property.

"Yours very respectfully,
W. M. TABER."

"I have not been able to get any interest out of Shere. The \$4500 note will be due Mch 22d and I shall be very glad to have it taken up."

Plaintiff then and there duly excepted.

IV.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of a certain letter which was offered and introduced in evidence by the plaintiff as set forth in plaintiff's bill of exceptions, Exception No. 4. Said letter read as follows:

“Westwood, Cal., May 23, 1916.

“Mr. W. M. Taber,

“First National Bank,

“Park Rapids, Minn.

“Dear Sir: In reply to your letter of May 18th, I wonder if it would not be possible in some way to have Mr. Shere adjust the mortgage in some way with Wyman-Partridge Co. by cancelling the old one and giving a new one to have the one they give you take precedence over it. It must have been Mr. Shere's intention to have the one they give you filed before the one for Wyman-Partridge. This may seem like an unusual procedure, but Mr. Shere is an unusual man and does things in an unusual manner and I will ask you to take the matter up along this line and see if you cannot get it fixed as I have suggested. What I mean is this: By endorsement J. Shere is responsible for the notes and to escape some of the liability on this, he might be able to make the trade.

“Is there any reason why you could not put in the claim on the notes which the White Stores Co. gave you in the amount of \$6,000 as the matter probably stands that way on their books. Any dividend paid would, therefore, be on the larger amount and it would make it so much less for someone to make up the difference.

“With the good times on the iron range I think the White Stores Co. will pay out much better than intimated in your letter, especially if put under a competent manager and if we could get the mortgage adjusted as suggested and claim filed for

\$6000 instead of \$4500, it would leave the amount to be made up very considerable less than now appears. The \$1500 which I sent you a year ago could be kept as a credit to my personal account if you could handle it in this way. There is certainly no evidence to show that the White Stores Co. took up the \$1500 note.

"I am not in position at this time to take advantage of the offer made in the last paragraph of your letter, but I would still be glad if you could give me the valuation of the land upon which Mr. Shere gave the mortgage, as asked for in a former letter.

"Yours truly,

"R. F. PRAY."

Plaintiff then and there duly excepted. [35]

V.

Said Court *errect* in sustaining the objection of the defendant to the introduction in evidence of a certain letter which was offered and introduced in evidence by the plaintiff as set forth in plaintiff's bill of exceptions, Exception No. 5. Said letter read as follows:

June 1, 1916.

"Mr. R. F. Pray,

"Westwood, Cal.

"Dear Sir: I have yours of May 23d in reference to the White Store Company's note, and replying will say that I feel very sure that Mr. Sheerer is not able to get the Wyman-Patrich people to release their mortgage. They promised to let me hear from them before June 1st but up to this I have heard nothing from them. On a separate sheet I give you

as near as I can the valuation of the lands that we have in the six thousand dollar (\$6,000) mortgage. I am very anxious, of course, to get this matter cleaned up. I am ready and willing to do anything I can to help you but as you know, of course, when the loan was made, it was made on the stripe of your endorsement and it is really you that we are looking to for our payment and I would appreciate it very much if you would arrange at this time to take the loan up as it is due and we, of course, ought to have our money. If you cannot take it all up at this time I would suggest that you pay us what you can and I will take a new note from you bearing interest at the rate of six per cent and will hold the White Stores notes as collateral security to your note.

“I enclose you, herewith, a few blanks and you can fill them out payable to us in such amounts as you will be able to take care of and return to me and we will do our best to get what we can out of the White Store Company’s assets on the strength of the six thousand dollars (\$6000) notes.

“I enclose you a little assignment or statement concerning the fifteen hundred dollars we now have and if satisfactory you can sign and return to me so that I can file a claim for the six thousand dollars (\$6000) and interest.

“I am very sorry, indeed, that this has fallen so heavily on you, but see no other way out of it at the present time.

“Yours truly,

“_____,”

“President.”

Plaintiff then and there duly excepted.

VI.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of a certain [36] letter which was offered and introduced in evidence by the plaintiff as set forth in plaintiff's bill of exceptions, Exception No. 6. Said letter read as follows:

“November 19th, 1918.

“Mr. R. F. Pray,

“Westwood, Cal.

“Dear Sir: We have been hoping we would be able to get something more out of the trustee in the White Stores Company but now have absolutely given up all hopes. We are still holding a loan of \$4500 dated March 23, 1915 and upon which on May 17th, 1918 we received from the trustee \$993.21 which has been endorsed on the note, leaving a balance of \$3506.79 and interest.

“I always feel it is unnecessary to make expense if it can be avoided and at this time am going to make you this proposition, Mr. Pray. You send us one-half of the balance of this note without taking into consideration the interest, that is \$1753.40 and we will cancel your name from the back of the note which entirely releases you. I feel that this is more than meeting you half way and trust we will receive a remittance as above stated by return mail. This holds good only that you do so this month.

“We would be willing to take Liberty bonds if you prefer.

“Yours truly,

“_____,
Pres.”

Plaintiff then and there duly excepted.

VII.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of a certain letter which was offered and introduced in evidence by the plaintiff as set forth in plaintiff's bill of exceptions, Exception No. 7. Said letter reads as follows:

“Westwood, Cal., November 26, 1918.

“W. M. Taber,

“Pres., First National Bank,

“Park Rapids, Minn.

“Dear Sir: I have received your letter of Nov. 19th in regard to the notes of the White Stores Co. and wish to thank you for the kind manner in which you have referred to them.

“By same mail I also had a letter from the new trustee of the White Stores Co. in regard to final hearing, and have written my attorneys, Courtney & Courtney, for a little further information. I should hear from them in a few days and will then communicate with you.

“With personal regards, I remain,

“Very truly yours,

“R. F. PRAY.”

Plaintiff then and there duly excepted.

VIII.

Said Court erred in sustaining the objection of the [37] defendant to the introduction in evidence of a certain letter which was offered and introduced in evidence by the plaintiff as set forth in plaintiff's bill of exceptions, Exception No. 8. Said letter reads as follows:

“Dec. 2d, 1918.

“Mr. R. F. Pray,
“Westwood, Calif.

“Dear Sir: I am just in receipt of yours of November 26th and, as stated in my former letter, we will be glad to have you give this due consideration at as early a date as possible and advise us.

“Kindly give up your final answer between now and the 15th of this month.

“With personal regards, I am,

“Very sincerely yours,

W. M. TABER.”

Plaintiff then and there duly excepted.

IX.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of a certain letter which was offered and introduced in evidence by the plaintiff as set forth in plaintiff's bill of exceptions, Exception No. 9. Said letter reads as follows:

“Westwood, Cal., Dec. 11, 1918.

“Wm. M. Taber,

“Pres., First National Bank,

“Park Rapids, Minn.

“Dear Sir: Referring to your recent correspond-

ence in regard to the White Stores notes. I have just to-day received a letter from Courtney & Courtney, attorneys at Duluth, saying that there was in the hands of trustee, considerable amount for distribution to the creditors of that company, and the distribution would soon be made.

“When this is done, I should be very glad to hear from you again. Please understand I do not wish to stall this matter off, but believe it is only proper to apply the distribution which you receive on these notes before making settlement.

“Very truly yours,

“R. F. PRAY.”

Plaintiff then and there duly excepted.

X.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of a certain letter which was offered and introduced in evidence by the plaintiff as set forth in plaintiff's bill of exceptions, Exception No. 10. Said letter reads as follows: [38]

“Park Rapids, Minnesota, Dec. 16th, 1918.

“Mr. R. F. Pray,

“Westwood, Calif.

“My Dear Mr. Pray: I have yours of December 11th in reference to the White Stores Company note and replying will say this. Of course, you realize I am very anxious, indeed, to get this matter cleaned up and off our books.

“If you care to make remittance as per my former letter at this time, I will do this. I will agree to give you one-half of any further amounts that we

receive from trustee. I should think this would be quite satisfactory to you.

"Kindly let me hear from you concerning this and oblige.

"Yours truly,

"W. M. TABER,

"President."

Plaintiff then and there duly excepted.

XI.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of a certain letter which was offered and introduced in evidence by the plaintiff as set forth in plaintiff's bill of exceptions, Exception No. 11. Said letter reads as follows:

"Park Rapids, Minnesota, 7/31/19.

"Mr. R. F. Pray,

"Westwood, Cal.

"My Dear Sir: The First National Bank of Park Rapids has turned over to me, for adjustment, a note upon which you appear as a guarantor, dated March 22d, 1915, and upon which there remains still due, the sum of \$3506.79 and interest.

"You are of course familiar with the entire matter and there is no necessity for my going into details, except to advise you that the Bank feels that they must do something to protect its interests. I am advised by the Receiver of the White Stores Company that it will be some time before they can close up this matter, as they have sued the Red River Lumber Company and expect to proceed on the double stock-holders liability. However, I am

instructed to advise you that to clean this matter up, the Bank will accept the face of the note and will return to you all dividends that they receive in connection with the receivership.

“In the event that you do not see fit to accept this proposition, the Bank have instructed me to sue on the note. This would be distasteful to the Bank, as well as the writer and I trust such course will not be necessary.

“Please let me hear from you at your earliest convenience. With kindest personal regards to yourself and family, I am,

“Very Truly Yours,

“MARK J. WOOLEY.”

Plaintiff then and there duly excepted. [39]

XII.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of a certain letter which was offered and introduced in evidence by the plaintiff as set forth in plaintiff's bill of exceptions, Exception No. 12. Said letter reads as follows :

“Westwood, Calif., Aug. 8, 1919.

“Mr. Mark J. Wooley,

“Park Rapids, Minn.

“My Dear Mark: I have your letter of July 31st relative to the White Stores note given to the First National Bank, Park Rapids, and bearing my endorsement.

“Last spring Mr. Taber wrote me that the balance of the note was about \$3500.00 and that if we would send one-half of this amount, he would cancel the

entire obligation against the White Stores and against me as an endorser. At that time I wrote Mr. Shere and told him about this offer and asked him to pay half of this settlement, and if he did, I would pay the other half and thus wipe this note out. Mr. Shere did not respond to this letter and I have written him again on the subject.

“This whole affair of the White Stores Co. has been a most unfortunate thing for me as I lost \$20,000.00 thru this investment and never felt I was responsible for it, morally, as I had nothing to do with the management of the stores.

“In addition to this loss I have already sent Mr. Taber \$1500.00 and am very anxious, indeed, to see it cleaned up, as it certainly has been a source of worry and anxiety to me.

“Would you not kindly ascertain Mr. Shere’s address and take the matter up with him direct and see if you cannot get half of the amount that Mr. Taber offered to settle for, and I will send the other half and get it out of the way.

“Hoping you will do this for me, I remain,

“Very truly yours,

“R. F. PRAY.”

Plaintiff then and there duly excepted.

XIII.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of a certain letter which was offered and introduced in evidence by the plaintiff as set forth in plaintiff’s bill of exceptions, Exception No. 13. Said letter reads as follows:

“Park Rapids, Minnesota, 8/29/19.

“Mr. R. F. Pray,

“Westwood, Cal.

“My Dear Mr. Pray: I have a letter from J. Shere dated the 20th inst. in reply to a letter from me written after I had received your letter, in which he advises me that he has written you that he can do nothing at this time.” [40]

“I have again taken the matter up with Mr. Taber and he tells me that he wrote you Nov. 19th, 1918, making you the proposition you suggested in your letter, but that same was contingent upon an acceptance during the month of Nov. 1918 and inasmuch as you did not see fit to accept same, he now advises me that he would not settle on that basis.

“You will understand that I have no discretion in this matter, the Bank simply renews the offer I made you in my former letter and that is contingent upon an early adjustment.

“I cannot help but feel that Shere is not doing the square thing with you, I see him frequently, he is located in the Andrus Building two doors from my father's office and I believe that he is making money, but of course has no tangible assets.

“The Bank looks to you as a responsible party for this money, anything that I could do for you in getting a settlement out of Shere I would be glad to do, but the Bank insists upon a settlement in the immediate future or they will insist upon an action being started to recover the total amount due with interest.

“I appreciate your position in this matter and

realize that the whole affair was an unfortunate one, but you realize that banks look at the business, not the human side of questions.

"I shall greatly appreciate an early reply and trust that same will be adjusted without the unpleasantness of having to institute an action.

"Very truly yours,

MARK J. WOOLEY."

Plaintiff then and there duly excepted.

XIV.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of a certain letter which was offered and introduced in evidence by the plaintiff as set forth in plaintiff's bill of exceptions, Exception No. 14. Said letter reads as follows:

"Westwood, Calif., Sept. 19, 1919.

"Mr. Mark J. Wooley,

"Park Rapids, Minn.

"Dear Sir: Since our last correspondence, I have tried very hard to get Mr. Shere to pay his half of the remaining portion of the note due the bank at Park Rapids, but without any success whatever.

"Inasmuch as the bank insists upon its legal right to sue the endorsers of the note, for which, however, I do not blame them, I suggest that they go ahead and sue either Mr. Shere or myself, or jointly, and ascertain what the outcome will be.

"Of course, I am very sorry to have this action

taken but see no way in which my legal rights may be determined any other way.

“Very truly yours,

“R. F. PRAY.”

Plaintiff then and there duly excepted. [41]

XV.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of two certain letters, dated respectively September 29th, 1919 and October 4th, 1919, which were offered and introduced in evidence by the plaintiff as set forth in plaintiff's bill of exceptions, Exception No. 15. Said letter of September 29, 1919, reads as follows:

“Park Rapids, Minnesota, 9/29/19.

“Mr. R. F. Pray,

“Westwood, Cal.

“Dear Sir: I have your favor of the 19th inst. and note what you say in regard to being unable to secure any kind of a settlement out of J. Shere.

“In case I should be able to secure a note from Mr. Shere running to you, for one-half of the amount due, would you in that case adjust this matter with the Bank?

“If you are interested in this proposition advise me and I will see what I can do. In any event please let me know what you think about same.

“Yours Truly,

“MARK J. WOOLEY.”

Said letter of October 4, 1919, reads as follows:

“Westwood, Calif., Oct. 4, 1919.

“Mr. Mark J. Wooley,

“Park Rapids, Minn.

“Dear Sir: In reply to your letter of Sept. 29th:

“I would not be satisfied to pay half the note with the understanding that Mr. Shere would give his note for the balance, as I am afraid Mr. Shere would not be in a position to pay the note when it became due. I had thought you were proceeding to put this matter in court, so I referred the matter to my attorney out here and he thinks it will be satisfactory, in order to determine just what my liability is, to have suit brot on the note.

“Sorry I cannot see my way on account of the reason given to take up Mr. Shere’s proposition.

“Yours truly,

“R. F. PRAY.”

Plaintiff then and there duly excepted.

XVI.

Said Court erred in sustaining the objection of the defendant to the introduction in evidence of two certain letters dated respectively June 26th, 1920 and July 22d, 1920, which were offered and introduced in evidence by the plaintiff, as set forth in plaintiff’s bill of exceptions, Exception No. 16. Said letter of June 26th, 1920, reads as follows.
[42]

“Park Rapids, Minn., June 26th, 1920.

“Mr. R. F. Pray,

“Westwood, Cal.

“My dear Sir: Mr. Taber has just been in to see

me again in regard to the notes he holds in which you are interested.

“He has just figured up the total amount, including interest, and the same amounts to about \$5,300. which does not figure all of the interest that is due. However, estimating it upon a basis of \$5,000. Mr. Taber requested that I again write you making you the following proposition:

“That the Bank will accept from you and give you a release from all further liability, the sum of \$2,500, and pay you one-half of any amounts that may be realized from dividends yet to be paid from the trusteeship of the White Stores Company.

“He would rather clean this matter up with you in this way then to be forced to go to the expense and trouble and the incidental unpleasantness of the institution of a law suit. He tells me that of course you were aware of the fact that at the time this money was loaned that he looked to you as the responsible individual in the transaction.

“I trust that you can see your way clear to adjust this matter on this basis and we shall be very glad if you so desire to institute an action in the State of Minnesota to recover from Mr. Shere, who, I think, is probably making some money. But in any event kindly give me a definite answer as to your intention in regard to adjusting this matter so that there will be no question as to what course the Bank must pursue.

“Very truly yours,

“MARK J. WOOLLEY.”

Said letter of July 22d, 1920, reads as follows:

“Westwood, Calif., July 22, 1920.

“Mr. Mark J. Woolley,

“Park Rapids, Minn.

“My Dear Mr. Woolley:

“Since receiving your letter of June 26th in regard to the White Stores notes, which I endorsed, I have consulted with my attorneys here and they advise me to let the matter go to suit, as in that way my legal rights will be fully protected in the matter.

“I appreciate very much the lenient manner in which Mr. Taber has treated this matter, and am sorry I will not be in position to take advantage of his kindness. I think possibly the best for all concerned will be to let the matter go to trial.

“Hoping you are enjoying the best of good luck in your practice and in your business, I remain,

“Yours truly,

“R. F. PRAY.”

Plaintiff then and there duly excepted.

XVII.

Said Court erred in granting a nonsuit to defendant as set forth in plaintiff's bill of exceptions, Exception No. 17 plaintiff then and there duly excepted. [43]

XVIII.

Said Court erred in giving, making, rendering, entering and filing its judgment in the above-entitled action in favor of the above-named defendant and against the above-named plaintiff.

XIX.

Said Court erred in not giving, making, rendering and filing its final judgment in the above-entitled action in favor of the above-named plaintiff and against the above-named defendant.

XX.

Said Court erred in giving, making, rendering, entering and filing its final judgment in the above-entitled action in favor of said defendant and against said plaintiff upon the pleadings and record in said action.

XXI.

Said Court erred in giving, making, rendering, entering and filing its final judgment in said action in favor of said defendant and against said plaintiff in this, that said final judgment was and is contrary to law and to the cause made and facts stated in the pleadings and record in said action.

In order that the foregoing assignments of error may appear of record said plaintiff presents the same to said Court, and prays that such disposition be made thereof as is in accordance with law and the Statutes of the United States in such cases made and provided; and said plaintiff herein prays the reversal of the above mentioned final judgment heretofore given, made, rendered, entered and filed in the above-entitled court, in the above-entitled action.

Dated: San Francisco, California, March 23, 1922.

FIRST NATIONAL BANK OF PARK
RAPIDS,

Plaintiff, Plaintiff in Error.

By its Attorneys,

WILLARD P. SMITH.

MARK J. WOOLEY. [44]

United States of America,
Northern District of California,—ss.

We, the undersigned, attorneys for the above-named plaintiff, plaintiff in error herein, do hereby certify that the foregoing assignments of errors is made on behalf of said plaintiff, plaintiff in error herein, and is in our opinion well taken, and the same now constitutes the assignments of error upon the writ prayed for.

Dated: San Francisco, California, this 23d day of March, 1922.

WILLARD P. SMITH,

MARK J. WOOLLEY,

Attorneys for Plaintiff and Plaintiff in Error
Herein.

Receipt of a copy of the within assignment of errors is hereby admitted the 28th day of March, 1922.

ALBERT A. ROSENSHINE,

GOLDMAN, NYE & SURR,

Attorneys for Defendant.

[Endorsed]: Filed Mar. 29, 1922. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[45]

(Bond on Writ of Error.)

KNOW ALL MEN BY THESE PRESENTS, That we, First National Bank of Park Rapids as principal, and United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto R. F. Pray in the full and just sum of Three Hundred and 00/100 Dollars, to be paid to the said R. F. Pray, his certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 24th day of March in the year of our Lord one thousand nine hundred and twenty-two.

WHEREAS, lately at a District Court of the United States for the Northern District of California, Southern Division in a suit depending in said Court, between First National Bank of Park Rapids, Plaintiff, vs. R. F. Pray, Defendant, a judgment was rendered against the said First National Bank of Park Rapids and the said First National Bank of Park Rapids having obtained from said Court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said R. F. Pray citing and admonishing him to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said First National Bank of Park Rapids shall prosecute its

said writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Acknowledged before me the day and year first above written.

FIRST NATIONAL BANK OF PARK
RAPIDS. [Seal]

UNITED STATES FIDELITY & GUAR-
ANTY COMPANY. [Seal]

By HENRY V. D. JOHNS,
Attorney-in-fact.

By ERNEST W. SWIVGLEY,
Attorney-in-fact.

(Premium charged for this bond is \$10.00 per annum.) [46]

Form of bond and sufficiency of sureties approved.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Mar. 27, 1922. W. B. Mal-
ling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[47]

(Title of Court and Cause.)

(Praecept for Record on Writ of Error.)

To the Clerk of said Court:

Sir:—

Please prepare record on writ of error to embrace the following:

1. Third amended complaint.

2. Answer to third amended complaint.
3. Stipulation waiving jury.
4. Minutes of Court on nonsuit.
5. Judgment.
6. Bill of exceptions and order settling bill of exceptions.
7. Assignments of error.
8. Petition for writ of error.
9. Order for writ of error.
10. Writ of error.
11. Order allowing writ of error.
12. Citation on writ of error.
13. Praecipe.
14. Bond.

WILLARD P. SMITH,
Attorney for Plff. in Error.

[Endorsed]: Filed Apr. 1, 1922. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [48]

In the Southern Division of the United States Dis-
trict Court in and for the Northern District of
California, Second Division.

No. 16,519.

THE FIRST NATIONAL BANK OF PARK
RAPIDS,

Plaintiff,

vs.

R. F. PRAY,

Defendant.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing forty-eight (48) pages, numbered from 1 to 48, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled cause, as enumerated in the praecipe for record on writ of error, as the same remains of record and on file in the office of the Clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$29.90; that said amount was paid by the plaintiff, and that the original writ of error and citation issued in said cause are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 1st day of April, A. D. 1922.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern District of California. [49]

Writ of Error.

UNITED STATES OF AMERICA,—ss.
The President of the United States of America, to
the Honorable, the Judges of the District Court
of the United States for the Northern District
of California, GREETING:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between First National Bank of Park Rapids, plaintiff in error, and R. F. Pray, defendant in error, a manifest error hath happened, to the great damage of the said First National Bank of Park Rapids, plaintiff in error, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 29th day of March, in the year of our Lord one thousand nine hundred twenty-two.

[Seal]

WALTER B. MALING,
Clerk of the United States District Court for the
Northern District of California.

Allowed by:

WM. C. VAN FLEET,
United States District Judge. [50]

Receipt of a copy of the within writ of error is hereby admitted this 30th day of March, 1922.

ALBERT A. ROSENSHINE,
B.

Attorney for Defendant.

[Endorsed]: No. 16,519. United States District Court for the Northern District of California. First National Bank of Park Rapids, Plaintiff in Error, vs. R. F. Pray, Defendant in Error. Writ of Error. Filed Apr. 1, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Return to Writ of Error.

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern
District of California. [51]

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States to R. F. Pray,
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, Southern Division, wherein First National Bank of Park Rapids is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, The Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 29th day of March, A. D. 1922.

WM. C. VAN FLEET,

United States District Judge. [52]

Receipt of a copy of the within citation on writ of error is hereby admitted this 30th day of March, 1922.

ALBERT A. ROSENSHINE,

B.

Attorney for Defendant.

[Endorsed]: No. 16,519. United States District Court for the Northern District of California. First National Bank of Park Rapids, Plaintiff in Error, vs. R. F. Pray, Defendant in Error. Citation on Writ of Error. Filed Apr. 1, 1922. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 3854. United States Circuit Court of Appeals for the Ninth Circuit. First National Bank of Park Rapids, a Corporation, Plaintiff in Error, vs. R. F. Pray, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed April 1, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.